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**Hospital San Carlos, Inc. d/b/a/ Hospital San Carlos  
Borromeo and Unidad Laboral De Enfer-  
meras(os) y Empleados De La Salud. Case 24-  
CA-11093**

April 26, 2010

**DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER  
AND PEARCE

On July 15, 2009, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply. In addition, the General Counsel's answering brief included a limited cross exception, the Charging Party filed an identical exception, and the Respondent answered those exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified and set forth in full below.<sup>2</sup>

We affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act, as defined in Section 8(d), by failing to pay employees in four units the full amount of a Christmas bonus owed them under the parties' collective-bargaining agreements.<sup>3</sup>

Each agreement promised eligible employees a Christmas bonus up to a maximum of \$810, depending on their salary. In 2008, the Respondent, without the Union's

consent, reduced the maximum bonus to \$370 based on a partial economic-hardship exemption it had received under Puerto Rico's Christmas bonus law.<sup>4</sup> That law required employers to pay a Christmas bonus, but the law expressly did not apply where, as here, employees were to receive a larger bonus under a collective-bargaining agreement. The Respondent nevertheless maintains that it was authorized to pay unit employees no more than the reduced statutory bonus under contract language that reads: "The Bonus established herein includes and is not in addition to the one established by law." In other words, the Respondent interprets that language to mean that its reduced statutory obligation entirely eliminated its larger contractual obligation. Applying the "sound arguable basis" standard articulated in *Bath Iron Works Corp.*, 345 NLRB 499, 501 (2005), affd. sub nom. *Bath Marine Draftsmen's Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007), we reject the Respondent's interpretation as implausible. The contractual language on its face merely incorporated the statutory bonus as a component of a single Christmas bonus due unit employees under the contract.<sup>5</sup> There is no suggestion in the language that the bonus required to be paid by the statute, if any, was the sole entitlement created by the contract. For that reason, we affirm the judge's finding.

**ORDER**

The National Labor Relations Board orders that the Respondent, Hospital San Carlos, Inc. d/b/a Hospital San Carlos Borromeo, Moca, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain in good faith with Unidad Laboral De Enfermeras(os) Y Empleados De La Salud (Union) as the exclusive collective-bargaining representative of the employees in the following four appropriate units:

Unit A:

**INCLUDED:** All regular full-time and regular part-time electricians, plumbers, refrigeration technicians, and utility employees employed by the Hospital at its facility located in Moca, Puerto Rico.

**EXCLUDED:** All other employees, secretaries, guards and supervisors as defined in the Act.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3rd Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We shall modify the judge's recommended Order and substitute a new notice to include the Board's standard remedial language for the violations found. Further, the General Counsel and the Charging Party except to the judge's failure to award interest on backpay. We find merit to that exception, and will order the payment of interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

<sup>3</sup> Although the judge did not make an express finding, the record establishes that the contractual Christmas bonus was a mandatory subject of bargaining. See *Waxie Sanitary Supply*, 337 NLRB 303, 304 (2001) (a holiday bonus paid for 3 consecutive years is a term and condition of employment).

<sup>4</sup> Puerto Rico Law No. 148 of June 30, 1969, as amended, P.R. Laws Ann. tit. 29, sec. 501 et seq.

<sup>5</sup> The credited testimony, moreover, establishes that the parties included the language in their contracts to clarify that unit employees were not entitled to both a statutory Christmas bonus and a contractual Christmas bonus, but only to the latter.

## Unit B:

INCLUDED: All medical technologists employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, office and clerical employees, guards and supervisors as defined in the Act.

## Unit C:

INCLUDED: All licensed practical nurses and technical employees employed by the Hospital at its facility located in Moca, Puerto Rico, including Operating Room technicians, X-ray technicians, respiratory therapy technicians, laboratory assistants, auxiliary pharmacists, and sterile equipment technicians.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

## Unit D:

INCLUDED: All registered nurses employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, head nurses, office employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

(b) Failing to continue in effect all the terms and conditions of employment contained in the collective-bargaining agreements covering its employees in the units described above.

(c) Failing and refusing to pay those unit employees the full amount of their 2008 Christmas bonus as set forth in their respective collective-bargaining agreements.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action.

(a) Continue in effect all the terms and conditions of employment contained in collective-bargaining agreements covering its employees in the units described above.

(b) Pay each unit employee the difference between the full Christmas bonus due him in 2008 under the applicable collective-bargaining agreement and the bonus amount actually paid him, with interest as prescribed in *New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987).

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, so-

cial security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Moca, Puerto Rico, copies of the attached notice marked "Appendix" in both English and Spanish.<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 15, 2008.

(d ) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 26, 2010

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| Wilma B. Liebman, | Chairman |
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| Peter C. Schaumber, | Member |
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| Mark Gaston Pearce, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain in good faith with Unidad Laboral De Enfermeras(os) Y Empleados De La Salud (Union) as the exclusive collective-bargaining representative of the employees in the following four appropriate units:

##### Unit A:

INCLUDED: All regular full-time and regular part-time electricians, plumbers, refrigeration technicians, and utility employees employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, secretaries, guards and supervisors as defined in the Act.

##### Unit B:

INCLUDED: All medical technologists employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, office and clerical employees, guards and supervisors as defined in the Act.

##### Unit C:

INCLUDED: All licensed practical nurses and technical employees employed by the Hospital at its facility located in Moca, Puerto Rico, including Operating Room technicians, X-ray technicians, respiratory therapy technicians, laboratory assistants, auxiliary pharmacists, and sterile equipment technicians.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

##### Unit D:

INCLUDED: All registered nurses employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, head nurses, office employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to continue in effect all the terms and conditions of employment contained in the collective-bargaining agreements covering employees in the units described above.

WE WILL NOT fail and refuse to pay those unit employees the full amount of their 2008 Christmas bonuses as set forth in their respective collective-bargaining agreements.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL continue in effect all the terms and conditions of employment contained in collective-bargaining agreements covering our employees in the units described above.

WE WILL pay each unit employee the difference between the full Christmas bonus due him in 2008 under his applicable collective-bargaining agreement and the bonus amount actually paid him, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

HOSPITAL SAN CARLOS, INC. D/B/A HOSPITAL SAN CARLOS BORROMEIO

*Isis M. Ramos-Melendez, Esq. and Efrain Rivera-Vega, Esq., for the Government.*<sup>1</sup>

*Tristan Reyes-Gilestra, Esq., for the Hospital.*<sup>2</sup>

*Harold E. Hopkins, Esq., for the Union.*<sup>3</sup>

#### DECISION

##### STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This is an alleged failure by Hospital San Carlos, Inc. d/b/a Hospital San Carlos Borromeo (the Hospital) to pay employees in certain bargaining units their 2008 Christmas bonus. I heard this case in trial in San Juan, Puerto Rico, on May 21, 2009. The case originates from a charge filed by Unidad Laboral De Enfermeras(os) Y Empleados De La Salud (the Union) on January 9, and amended on February 25, 2009, against the Hospital. The prosecution of the case was formalized on March 31, 2009, when the Regional Director for Region 24 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued a complaint and notice of hearing (complaint) against the Hospital.

The complaint specifically alleges the Hospital has since on or about December 15, 2008, failed to continue in effect all the

<sup>1</sup> I shall refer to counsel for General Counsel as counsel for the Government or Government.

<sup>2</sup> I shall refer to counsel for the Hospital as counsel for the Hospital or Hospital.

<sup>3</sup> I shall refer to counsel for the Union as union counsel or Union.

terms and conditions of employment for its employees as contained in four separate agreements which were in effect at the time by failing and/or refusing to pay employees in the units their 2008 Christmas bonus. It is alleged the Hospital engaged in the conduct without the Union's consent and that bonuses are mandatory subjects of bargaining. It is alleged the Hospital by its actions has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the National Labor Relations Act, as amended, (the Act) and in violation of Section 8(a)(1) and (5) of the Act.

The Hospital, in a timely filed answer to the complaint, denies having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, the post-trial briefs, and the authorities cited therein. Based on more detailed findings and analysis below, I conclude and find the Hospital violated the Act substantially as alleged in the complaint.

#### FINDINGS OF FACT

##### I. JURISDICTION, LABOR ORGANIZATION STATUS

The Hospital is a Puerto Rico corporation with an office and place of business in Moca, Puerto Rico, where it is, and has been, engaged in the operation of a hospital providing health care services. During the past 12 months ending March 31, 2009, a representative period, the Hospital purchased and received directly from points and places located outside the Commonwealth of Puerto Rico goods and materials valued in excess of \$50,000. During the same period of time it also had gross revenues in excess of \$250,000. The parties admit, and I find, the Hospital is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. THE FACTS

###### A. Background

It is admitted that units A through D inclusive described below, the Units, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. It is admitted the Union was certified as the exclusive collective-bargaining representative of unit A on December 18, 2006; unit B on December 9, 1997; unit C on October 18, 1999; and unit D since at least 2006. It is also admitted that at all times since the dates just set forth and based on Section 9(a) of the Act the Union has been the exclusive collective-bargaining representative of the units. It is admitted that at all times material herein (specifically including December 15, 2008), there were collective-bargaining agreements between the Hospital and the Union covering terms and conditions of employment for employees in each of the units.

###### B. The Collective-Bargaining Units

###### Unit A:

INCLUDED: All regular full time and regular part-time electricians, plumbers, refrigeration technicians, and utility employees employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, secretaries, guards and supervisors as defined in the Act.

###### Unit B:

INCLUDED: All medical technologists employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, office and clerical employees, guards and supervisors as defined in the Act.

###### Unit C:

INCLUDED: All licensed practical nurses and technical employees employed by the Hospital at its facility located in Moca, Puerto Rico, including Operating Room technicians, X-ray technicians, respiratory therapy technicians, laboratory assistants, auxiliary pharmacists, and sterile equipment technicians.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

###### Unit D:

INCLUDED: All registered nurses employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, head nurses, office employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

###### C. The Bonuses

The parties stipulated the collective-bargaining agreements contain the following effective dates: (1) Unit A, electricians, plumbers, refrigeration technicians and utility employees from August 26, 2007, through August 25, 2010; (2) Unit B, medical technologists from June 5, 2006, through June 4, 2009; (3) Unit C licensed practical nurses and technical employees from May 2008 through May 2011; and (4) Unit D registered nurses from January 1, 2006, through December 31, 2008.

The parties' collective-bargaining agreements also contain Christmas bonus provisions. Language for the Christmas bonuses at issue herein (2008) states, each eligible unit employee would receive a bonus equivalent to 6 percent of their total salary up to a maximum salary of \$13,500 earned within the period for the said bonus. In other words the maximum bonus amount payable in 2008 would be \$810. In order for a unit employee to be eligible for the bonus the employee must have worked at least 700 hours within the 12 months between October 1 and September 30, of the previous year and be a regular employee as of the date of the payment of the bonus which payment date is between December 1 and 15 of each year. The bonus established by each unit's collective-bargaining agree-

ment contains language stating, "The bonus established herein includes and is not in addition to the one established by law."

The parties stipulated that on December 15, 2008, the Hospital paid a maximum amount of \$370 to its unit employees as a Christmas bonus. The parties further stipulated the formula set forth in the parties collective-bargaining agreements provide for a 2008 Christmas bonus payment up to a maximum of \$810. The Hospital acknowledges the amount (\$810) is mathematically correct but asserts it had no obligation to pay that amount in 2008. The Hospital stipulated it did not pay Christmas bonuses for its unit employees in 2008 utilizing the formula set forth in the parties' collective-bargaining agreements. The Hospital, however, paid the unit employees' 2006 and 2007 Christmas bonuses using the applicable collective-bargaining formulas. The only difference between the statutory mandated Christmas bonus and the collective-bargaining agreement bonus for 2008 is the maximum employee wage (\$10,000 for the law and \$13,000 for the contract) on which the percentage (6 percent) is computed to arrive at the amount for the bonus.

Union Representative Arturo Grant testified that during negotiations for the contractual Christmas bonus the parties utilized the Puerto Rico Christmas Bonus Law as a "model" but added a provision to explain there would not be two (law and contract) bonuses paid unit employees "that [it] would not be paid in the pyramid fashion, that it would not be two bonuses." Hospital HR Director Migdalia Ortiz testified pyramid discussions did not arise in negotiations regarding Christmas bonuses but arose in negotiations regarding overtime pay.

It is helpful, at this point, to examine the Christmas Bonus Law. Commonwealth of Puerto Rico Law No. 148 of June 30, 1969, as amended (Christmas Bonus Law) 29 L.P.R.A. Section 501 requires any employer who employs one or more worker or employee to pay the worker or employee a Christmas bonus. The Christmas Bonus Law sets forth the hours (700) an employee must work in a natural year (October 1 to September 30) to be eligible for a bonus and provides percentage (6 percent) [for 2008] computations utilizing employees' wages or salary (up to a maximum wage or salary or \$10,000) to determine the amount of the bonus. The specific time frame (December 1 to 15) for paying the bonus is set forth as well as penalties for late or nonpayment of the bonuses.

The Secretary of Labor and Human Resources for Puerto Rico is designated to administer the Christmas Bonus Law and is empowered to examine an employer's books, accounts, files, and related documents to determine an employer's responsibilities toward their employees regarding Christmas bonuses. An employer may be exempt from paying, in whole or in part, the statutory Christmas bonus by petitioning the Secretary of Labor and Human Resources for such relief. An employer may be exempt, in whole or in part, by demonstrating to the Secretary the employer has not obtained profits from its business, or the profits are not sufficient to cover the total amount of the bonuses without exceeding a 15-percent limit on net annual profits that must be utilized for the statutory Christmas bonuses. In order to seek any type of exemption an employer must submit to the Secretary of Labor and Human Resources by November 30 a general balance sheet and a profit-and-loss statement for the 12-month period from October 1 of the previous year to

September 30 of the current year. The balance sheet and profit-and-loss statements must be duly certified by a certified public accountant. If an employer does not submit the above described general balance sheet and profit-and-loss statements within the time and in the manner specified, the employer shall be bound to pay the statutory required Christmas bonuses.

The Christmas Bonus Law (29 L.P.R.A. Section 506) states: "The provisions of this chapter shall not apply in cases where the workers or employees receive an annual bonus by collective agreement, except in the event where the amount of the bonus to which entitled by such collective agreement may result lower than the one provided by this chapter in which case they shall receive the necessary amounts to complete the bonus provided herein."

The parties stipulated to a number of relevant letters exchanged between the parties as well as with the Puerto Rico Department of Labor and Human Resources regarding the 2008 Christmas bonuses for the unit employees at issue herein.

Union Representative Grant, on November 11, 2008, wrote Hospital HR Director Ortiz expressing concern regarding rumors the Hospital was planning not to pay the Christmas bonus for the unit employees for 2008. Grant reminded Ortiz the Hospital was required by the parties' collective-bargaining agreements to pay the bonuses and asked Ortiz to notify the Hospital's supervision the Christmas bonuses would be paid so they would stop telling the employees otherwise.

HR Director Ortiz responded to Grant's November 11 letter explaining the Hospital had, with sacrifice, paid the Christmas bonuses the previous 2 years but 2008 was different because "the financial result was negative." Ortiz stated in her letter the "Christmas bonus of the Collective Bargaining Agreements is subject to what is provided for in the Legal Bonus [statutory bonus] to the point of requiring compliance, for example: the requirement of working no less than 700 hours, the period which is considered for computation of the bonus, the percentages of said bonus and the date of the payment between the 1st and 15th of December." Ortiz further noted in her letter the collective-bargaining agreement bonus "includes and is not in addition to the one established by Law." HR Director Ortiz also states in her letter that if the Hospital is exonerated from the legally required Christmas bonus it would also be exonerated from the collective-bargaining agreement Christmas bonus.

Hospital Executive Director Rosaida Crespo Cordero testified she requested, in writing, on November 25, 2008, from the Puerto Rico Department of Labor and Human Resources partial exoneration of payment of the 2008 Christmas bonuses. Executive Director Cordero also attached the necessary financial statements to her request and asserted that 15 percent of the total net earnings of the Hospital was "not enough to comply with the .06% bonus established for this [2008] year." The Hospital specifically requested it be authorized to pay a pro-rated bonus amount to its qualified employees.

Puerto Rico Department of Labor and Human Resources Sub-Director Carlos I. Maldonado replied to Cordero on December 1, 2008, advising her the Department would audit the Hospital's books and accounting documents for verification of the Hospital's financial claims. Maldonado provided the Hospital with a copy of the Department's form "Request for Decla-

ration of Exoneration of Christmas Bonus with Attachments A & B.” The Department, however, approved a partial exoneration of bonus payments for the Hospital on December 1, 2008.

On December 4, 2008, Hospital Executive Director Cordero provided Sub-Director Maldonado a completed “Request for Declaration of Exoneration of Christmas Bonus” form.

On December 9, 2008, Union Executive Director Radames Quinones wrote the Secretary of the Department of Labor and Human Resources Roman Velasco Gonzalez regarding the Hospital’s request for an exemption from paying the 2008 Christmas bonus to the unit employees at the Hospital. Quinones advised the Secretary the Union was the exclusive representative of the employees at the Hospital and the Hospital and Union were parties to collective-bargaining agreements governing payment of the 2008 Christmas bonus for the unit employees. Quinones asserts in his letter the Christmas Bonus Law does not apply nor are the payment exemptions applicable to the parties herein because of the collective-bargaining agreements covering the Hospital’s employees. Quinones also asserts in his letter that any adjustment to the payment of the Christmas bonus had to be agreed to by the parties “and not imposed by the Department of Labor.” Quinones requested he be provided a copy of any decision the Secretary made regarding the bonus matter.

Hospital Executive Director Cordero, in a memorandum dated December 10, 2008, addressed to all Hospital employees, notified them the Hospital would be paying only a partial Christmas bonus for 2008.

In a December 12, 2008 letter to Hospital Executive Director Cordero, Department of Labor and Human Resources Sub-Director Maldonado noted the Department had, on December 1, 2008, approved the Hospital’s partial exoneration request for the 2008 Christmas bonus; but stated, he had been advised on December 9, 2008, by Union Executive Director Quinones the Union was the exclusive representative for the unit employees. Maldonado then noted in his letter those portions of the Christmas Bonus Law where it states the provisions of the Law do not apply in cases where the employees receive bonuses through a collective-bargaining agreement unless the collective-bargaining agreement bonus is less than the statutory bonus in which case the statutory amount would be paid the employees. Maldonado continued:

According to the above-mentioned, the approved exoneration so that your Company pays the Christmas Bonus based on 15% of the profits only applies to those employees that do not belong to the appropriate unit.

In those cases where the employees receive annual bonuses through a Collective Bargaining Agreement, the Collective Bargaining Agreement will be law between the parties.

Hospital Executive Director Cordero replied on December 16, 2008, to Department of Labor and Human Resources Sub-Director Maldonado’s December 12, 2008 letter stating, in pertinent part:

In reference to your indication that the exoneration granted only applies to those employees that do not belong to the appropriate unit, we understand that this is not correct. What is

correct is what you point out at the end of the letter that “Where the employees receive annual bonuses through the Collective Bargaining Agreement, the Collective Bargaining Agreement will be Law between the parties.” In the case of the Hospital San Carlos in the Collective Bargaining which is the Law between the parties, the Christmas Bonus Article was written in accordance with the Law and also specifically provides that said Bonus “includes and is not in addition to the one established by Law.”

On December 29, 2008, Sub-Director Maldonado responded to Hospital Director Cordero’s December 16, 2008 letter as follows:

We received your communication of December 16, 2008 regarding the reference matter.

We inform that the documentation received has formed part of the file. We prepare to evaluate its content and the pertinence with the allegations presented by your organization.

If it is necessary, we will contact you once again.

The Department of Labor and Human Resources did not, thereafter, contact the Hospital on the bonus matter.

### III. ANALYSIS, DISCUSSION, AND CONCLUSIONS

The Board in a Christmas bonus case, *Bonnell/Tredegar Industries*, 313 NLRB 789, 790 (1994), noted; “it is well settled that an employer violates Section 8(a)(5) and (1) of the Act as elucidated in Section 8(d) of the Act, by modifying a term of a collective bargaining agreement without the consent of the other party while the contract is in effect [footnote omitted].” Stated differently, Section 8(d) of the Act first requires an employer and union to bargain collectively “in good faith with respect to wages, hours, and other terms and conditions of employment.” However, Section 8(d) and Board precedent also imposes an additional requirement on the parties when there is a collective-bargaining agreement in effect between the parties and an employer seeks to modify or alter the terms and conditions contained in the agreement the employer must obtain the union’s consent before making or implementing any changes. *St. Vincent Hospital*, 320 NLRB 42 (1995). Strictly speaking an employer is prohibited from modifying the terms and conditions of employment established by a collective-bargaining agreement without first obtaining the consent of the union.

Turning to the instant case the parties stipulated the Union is the exclusive representative of the employees in the four separate appropriate units described elsewhere herein. It is also stipulated that a separate collective-bargaining agreement was in effect at all material times herein covering employees in each of the separate units and each of the agreements contained provisions for Christmas bonuses for the unit employees. It is stipulated the formula for each of the Christmas bonuses correctly calls for a maximum Christmas bonus payment of \$810 and it is stipulated the Hospital only paid a maximum of \$370 to its unit employees as the 2008 Christmas bonus. The Hospital admits it did not follow the contractual formula for computing the 2008 Christmas bonuses. It is undisputed the Hospital did not obtain the consent of the Union when it changed the terms of the parties collective-bargaining agreements by failing

to follow the formula for bonus payments specifically set forth in the agreements. In fact the Hospital not only did not have the consent of the Union for the changes, the Union tried to persuade the Hospital not to deviate from the collective-bargaining agreement terms and to pay the bonuses in the amounts specified in the contracts. The Hospital knew of the specific formula requirements of the parties agreements in that it paid the Christmas bonuses pursuant to the agreements' formulas for the 2006 and 2007 bonuses.

I find the Hospital violated Section 8(a)(5) and (1) of the Act when it modified the Christmas bonus provisions of the parties' collective-bargaining agreements without the consent of the Union.

I turn to contentions raised by the Hospital that it was permitted or privileged to modify the terms of the parties' agreements regarding Christmas bonuses without violating the Act. As hereinafter explained, I reject all of the Hospital's contentions it was privileged to make unilateral changes regarding the 2008 Christmas bonuses. The Hospital contends section C of the Christmas bonus provisions set forth in each of the agreements allowed or permitted it to seek permission from the Puerto Rico Department of Labor and Human Resources to be exonerated from payment of some or all of the Christmas bonus amounts for 2008. As noted elsewhere herein section C of each of the collective-bargaining agreements states, "the bonus established herein includes and is not in addition to the one established by law." I am not unmindful the Puerto Rico Christmas Bonus Law does allow for an employer to seek, and if appropriate, may be granted exoneration from some or of all the payment of Christmas bonuses if the profits of the employer are insufficient for payment of any bonus, or inadequate for payment of the full Christmas bonus. It is clear, however, that the language of section C of the parties' agreements on bonuses does not incorporate the Christmas Bonus Law provisions into the parties' agreements. As credible testified<sup>4</sup> by Union Representative Grant, this provision in each of the agreements was added to clarify or explain that there would not be two, law and contract, bonuses paid unit employees that it "would not be paid in the pyramid fashion, that it would not be two bonuses," that there would be a contractual Christmas bonus only. Thus the Puerto Rico Christmas Bonus Law provision which allows an employer to seek exoneration for all or part of payment of the Christmas bonus, if payment of the bonuses would exceed 15 percent of the employer's profits, is not available or applicable to the Hospital because the law does not apply to contractual bonuses. Although the Hospital sought and initially obtained, partial exoneration from paying the contractual 2008 Christmas bonus from the Puerto Rico Department of Labor and Human Resources the exoneration provisions of the Christmas Bonus Law simply do not apply to the Hospital. Even if the statutory provisions of the Christmas Bonus Law were applicable to the Hospital the Puerto Rico Department of Labor and Human Resources withdrew its partial exoneration of payment for the Hospital of the 2008 Christmas bonuses

because, as the Department noted, the provisions of the statute do not apply in cases, as is the case herein, where the employees receive annual Christmas bonuses by collective-bargaining agreement. The only exception, not applicable here, is where the contractual bonus is less than the statutory one then the statutory bonus amount would be paid to the employees.

In conclusion on this point, I find no merit to the Hospital's contention that because the parties used language from the Puerto Rico Christmas Bonus Law as a "model" for their collective-bargaining agreement provisions that somehow acted to incorporate all the various provisions of that Law into the contractual provisions governing Christmas bonuses. The provisions in each of the agreements simply do not bear out that contention.

Finally, there is no language in the bonus provisions of the parties' collective-bargaining agreements that would constitute any type clear and unmistakable waiver of rights by the Union regarding Christmas bonuses for Unit employees.

In summary I find the Hospital was not lawfully permitted, nor in any manner privileged, to make the unilateral changes it did regarding the Unit employees 2008 Christmas bonus.

#### REMEDY

Having found that the Hospital has engaged in certain unfair labor practices, I find it necessary to order the Hospital to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act as set forth in the recommended Order below.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

#### ORDER

The Hospital, Hospital San Carlos, Inc. d/b/a Hospital San Carlos Borromeo Moca, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect all the terms and conditions of employment contained in agreements covering its employees in the units described elsewhere herein, by failing and refusing to pay employees in the units the full amount of their 2008 Christmas bonus as set forth in the agreements.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action.

(a) Continue in effect all the terms and conditions of employment contained in the agreements covering its employees in the Units described elsewhere herein, and pay its employees in the Units the full amount of their 2008 Christmas bonuses as set forth in the agreements.

(b) Post at its Moca, Puerto Rico facility copies of the attached notice in English and Spanish marked "Appendix." Copies of the notice, on forms provided by the Regional Director

<sup>4</sup> I credit Grant's testimony about the bonus provision language, his testimony was logical and he appeared to be testifying truthfully as best he could recall.

<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

for Region 24, after being duly signed by the Hospital's authorized representative, shall be posted by the Hospital immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Hospital to insure that said notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Hospital has gone out of business or closed the facility involved in these proceedings, the Hospital shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Hospital at any time since December 15, 2008.

(c) Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps the Hospital has taken to comply herewith.

Dated, Washington, D.C., July 15, 2009

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of employment contained in agreements covering our employees in the units described below by failing and refusing to pay employees in the units the full amount of their 2008 Christmas bonus as set forth in the agreements. The units are:

UNIT A:

INCLUDED: All regular full time and regular part-time electricians, plumbers, refrigeration technicians, and utility employees employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, secretaries, guards, and supervisors as defined in the Act.

UNIT B:

INCLUDED: All medical technologists employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, office, and clerical employees, guards, and supervisors as defined in the Act.

UNIT C:

INCLUDED: All licensed practical nurses and technical employees employed by the Hospital at its facility located in Moca, Puerto Rico, including Operating Room technicians, X-ray technicians, respiratory therapy technicians, laboratory assistants, auxiliary pharmacists, and sterile equipment technicians.

EXCLUDED: All other employees, guards, and supervisors as defined in the Act.

UNIT D:

INCLUDED: All registered nurses employed by the Hospital at its facility located in Moca, Puerto Rico.

EXCLUDED: All other employees, head nurses, office employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL continue in effect all the terms and conditions of employment contained in the agreements covering our employees in the units described above and will pay our employees in the units the full amount of their 2008 Christmas bonus as set forth in the agreements.

HOSPITAL SAN CARLOS, INC. D/B/A HOSPITAL SAN  
CARLOS BORROMEIO